

REMARKSStatus of Claims:

Claims 1-36 were originally filed with the patent application. Claims 24-34 were canceled and Claims 37-49 were added by the February 20, 2005 Amendment and Response. Claims 7 and
5 45-49 have been withdrawn from consideration by the Examiner.

§112 Rejection:

Claims 1-6, 8-23, and 37-44 stand rejected under 35 U.S.C. §112, first paragraph, for failure to comply with the written description requirement. More specifically, the Examiner takes the
10 position that the phrase "to achieve a substantially constant airflow rate through said passage that is substantially independent of the magnitude of inhalation" is new matter. Independent Claim 1 includes a phrase of this type, while independent Claim 37 presents a similar phrase. Applicant respectfully reconsideration as the subject matter encompassed by the quoted phrase is clearly disclosed in the original specification. Applicant refers the Examiner to the following passages from
15 the original specification:

Page 8, lines 3-7: "Stated another way, so long as the inhalatory forces are in excess of a certain threshold, any inhalatory force by a user will produce at least substantially the same flow rate through the inhaler as a result of the modification of the size of the airflow passage through which all airflow is directed (e.g., by changing the position of the baffle in the converging flow
20 regulation port)" (emphasis added).

Page 8, line 20 through page 9, line 1: " Moreover, these "signal-based" airflow regulation principles may be used with any type of flow regulating structure that is able to move in response to a signal to regulate the size of an airflow passage through which all airflow is directed so

as to provide an at least substantially uniform flow rate, regardless of the inhalatory forces being generated by a user of the inhaler (again, so long as they are in excess of at least a certain threshold)" (emphasis added).

Page 38, line 8 through page 39, line 11: "Consider the operation of the inlet airflow regulation assembly 228 in relation to three different users which further illustrates the operational principles of the airflow regulation assembly 228. Assume that user A is only able to generate an airflow that generates a force on the head 236 of the baffle 232 that is equal to the biasing forces being exerted on the head 236 by the spring 244. The baffle 232 thereby remains in its "static" position with the largest possible spacing between the head 236 of the baffle 232 and the inner wall of the flow regulation port 208. The flow rate of the airflow through the airflow conduit 204 will then be F_1 .

Now assume that user B is able to generate a larger inhalatory force than user A. As a result, the baffle 232 will move against the biasing forces being exerted by the spring 244 to reduce the spacing between the head 236 of the baffle 232 and the inner wall of the flow regulation port 208. More specifically, the baffle 232 will move to a position relative to the flow regulation port 204 where the spacing between the head 236 of the baffle 232 and the inner wall of the flow regulation port 208 will at least substantially produce a flow rate through the airflow conduit 204 which is at least substantially equal to F_1 (the same flow rate through the airflow conduit 204 realized by user A that in the present example has a reduced inhalatory capacity in relation to user B).

Finally, assume that user C is able to generate a larger inhalatory force than user B. As a result, the baffle 232 will move against the biasing forces being exerted by the spring 244 to further reduce the spacing between the head 236 of the baffle 232 and the inner wall of the flow regulation port 208 in comparison to user B. More specifically, the baffle 232 in the case of user C will move

to a position relative to the inlet port 204 where the spacing between the head 236 of the baffle 232 and the inner wall of the flow regulation port 208 will at least substantially produce a flow rate through the airflow conduit 204 which is at least substantially equal to F_1 (the same flow rate through the airflow conduit 204 realized by both users A and B, that in the present example have a reduced inhalatory capacity in relation to user C)" (emphasis added).

Based upon the foregoing, Applicant respectfully requests that the §112 rejection be withdrawn, as the subject matter of Claims 1 and 37 is clearly supported by the original specification.

Withdrawal of Claims 45-49:

The Examiner takes the position that Claims 1 and 45 are related as combination-subcombination, and therefore withdrew Claims 45-49 from examination. Virtually all of the limitations from Claim 1 are included verbatim in Claim 45 (Claim 1 calls out "at least one ejection actuator," while Claim 45 calls out "at least one droplet ejection assembly"). MPEP §806.05(c)(II) provides that "Where the relationship between the claims is such that the separately claimed subcombination B_{sp} constitutes the essential distinguishing feature of the combination AB_{sp} as claimed, the inventions are not distinct and a requirement for restriction must not be made, even though the subcombination has separate utility." Applicant respectfully requests that Claims 45-49 be reinstated and allowed with independent Claims 1 and 37, as well as their corresponding dependent claims.

Conclusion:

Based upon the foregoing, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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Date: 8/1/05